

BEFORE THE
UTAH AIR QUALITY BOARD

In the Matter of:

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Sevier Power Company Power Plant
Sevier County, Utah
DAQE-AN2529001-04

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Findings and Conclusions
and Order

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On June 15, 2006, parties and participants appeared before the Utah Air Quality Board in the above-entitled matter for final hearing on a Request for Agency Action by Sevier County Citizens for Clean Air and Water (“Sevier Citizens”) appealing an Approval Order granting a permit to Sevier Power Company (“SPC”) to construct and operate a coal-fired power plant in Sevier County, Utah, issued on October 12, 2004. James O. Kennon and Cindy Roberts appeared for Sevier Citizens, Fred W. Finlinson appeared for SPC, Michael Jenkins appeared for PacifiCorp, and Paul McConkie and Christian Stephens appeared for the Executive Secretary. Utah Air Quality Board members present were John Veranth, Dianne Nielson, Jerry Grover, James Horrocks, Nan Bunker, Stead Burwell, JoAnn Seghini, and Ernest Wessman, and Scott Lawson was connected telephonically. Mr. Wessman recused himself because of his employment relationship with PacifiCorp. Fred Nelson acted as counsel for the Board. The Board voted seven in favor (John Veranth, Dianne Nielson, Jerry Grover, James Horrocks, Nan Bunker, JoAnn Seghini, and Scott Lawson) and one opposed (Stead Burwell) to issue these Findings and Conclusions and Order.

By pleading dated November 1, 2004, the Sevier Citizens filed a Request for Agency Action appealing the Approval Order granting a permit to SPC to construct and operate a coal-

fired power plant in Sevier County, Utah, and petitioned to intervene in the proceeding. Sevier Citizens filed a more specific Request for Agency Action on March 14, 2005. The Board granted Sevier Citizens' intervention petition.

Sierra Club and PacifiCorp were denied intervention in the proceedings (see previous order of Board dated May 12, 2005). However, the Board granted Sierra Club and PacifiCorp amicus status. Sierra Club declined to participate as amicus.

Discovery concluded on January 30, 2006. On April 6, 2006, the Board heard argument on (1) the Executive Secretary's motion to dismiss the general allegations in Sevier Citizens' November 1, 2004, Request for Agency Action, and (2) the Executive Secretary's motion for judgment on the pleadings on claims 1-3, 6-7, and 10-13 of the fourteen claims in Sevier Citizens' March 16, 2005, Request for Agency Action. Upon agreement by Sevier Citizens that the fourteen claims in the March 16, 2005 were the totality of the claims it was alleging, the Executive Secretary withdrew the motion to dismiss. At the April 6, 2006, hearing, the Board dismissed claims 2, 6, and 10, for the reasons stated below. The Board deferred judgment on claims 1, 3, 7, and 11-13 until after a hearing on those claims and claims 4, 8-9, and 14. The formal adjudicative hearing was held in Richfield on May 10, 2006, testimony and other evidence was received, and the Board heard closing arguments. Parties, and PacifiCorp, submitted post-hearing briefs on May 22, 2006.

The underlying issue before the Board is whether the Executive Secretary complied with State statutes and the Utah Air Quality Board rules in issuing the October 14, 2004, Approval Order to Sevier Power Company. To prevail, Sevier Citizens have the burden of proving that the Executive Secretary failed to comply with State air quality requirements.

Having heard the evidence and after reviewing the post-hearing briefs, this matter came before the Board on June 15, 2006, for decision. The Board makes the following findings and conclusions, and issues an order as follows:

1. Claim 1 is that the Executive Secretary “failed to evaluate the combined emissions of the three proposed coal-fired power plants currently under application in the state of Utah and the effects it would have upon nearby National Parks.”

Utah Administrative Code R307-405-6(2) requires that the determination of whether the source will cause or contribute to a violation of the Prevention of Significant Deterioration (“PSD”) maximum allowable increases or the National Ambient Air Quality Standards (“NAAQS”) in any area take into account all allowable emissions of approved sources whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

John Jenks, engineer of the Division of Air Quality (DAQ) and George Wilkerson, expert witness for SPC, testified that the proposed Hunter Four plant was not included because it was not approved, its application having been put on hold. They also testified that projected emissions from the IPP expansion and other approved sources had been factored into the NAAQS analysis. Mr. Jenks testified that the alleged violation of a 24 hr average for PM10 from existing sources was determined to be caused by modeled emissions from two gypsum plants and that it was determined through the near field modeling that the exceedences were not contributed to significantly by the proposed SPC power plant.

Sevier Citizens did not present contrary evidence to support its claim. Therefore, because Sevier Citizens failed to meet its burden of proof, Claim No. 1 is hereby denied.

2. Claim 2 was dismissed by the Board. The allegation addressed the issue of standing that was mooted by the granting of standing to Sevier Citizens.

3. Claim 3 is that the Executive Secretary “failed to adequately consider the use of IGCC both as a viable method of achieving BACT and as a cost effective way to minimize emissions.

Colin Campbell, Senior Project Manager for RTP Environmental Associates in Raleigh, North Carolina, testified as an expert witness for the Executive Secretary. Mr. Campbell had been hired by the UDAQ as a consultant for the purpose of reviewing the New Source Review Plan and Recommended Approval Order to ensure thoroughness and consistency with federal NSR requirements. Mr. Campbell testified that he agreed with the opinion of the Executive Secretary, as well as the letter issued by EPA dated December 13, 2005, that IGCC should not be considered as an available control technology for more conventional coal-fired power plants because it would redefine the basic design of the source.

Sevier Citizens did not present expert testimony that IGCC should be BACT but relied on third party statements that did not meet its burden of proof. Claim 3 is therefore, hereby denied.

4. Claim 4 is that the Executive Secretary “failed to determine that the ambient air within the Sevier Valley airshed is in compliance with the Clean Air Act and, in fact, has no base line data with which to evaluate the additions requested by SPC.”

Tom Orth testified for the Executive Secretary and George Wilkerson testified for SPC regarding the use of ambient monitors for a one year period and the use of the derived data to determine the area was in attainment and in compliance with the Clean Air and Utah Air Conservation Acts. DAQ witnesses testified regarding how additional emissions, to include emissions from mobile sources, agricultural emissions, and imported pollution, were accounted

for.

Sevier Citizens did not present expert testimony or otherwise present evidence sufficient to meet its burden of proof, therefore, Claim 4 is hereby denied.

5. Claim 5 is that the Executive Secretary “failed to model the air flows and currents as they actually exist within the enclosed Sevier Valley, but rather assumed uniform distribution of emissions from the proposed SPC plant.”

Tom Orth, on behalf of the Executive Secretary, and George Wilkerson, on behalf of SPC, testified concerning meteorological monitoring data and the use of upper air data supplied by the US Weather Service. They also testified concerning the appropriateness of the models used as prescribed by Board rules and that the results demonstrated that exceedances of the NAAQS and PSD limits would not occur.

Sevier Citizens provided no expert testimony or other evidence sufficient to meet its burden of proof, therefore, Claim 5 is hereby denied.

6. Claim 6 is encompassed in Claim 5 and is dismissed on that basis.

7. Claim 7 is that “Fish Lake National Forest and Dixie National Forest are each in the process of implementing a “schedule burn” program to improve the quality of the natural forests. During the next ten years, each jurisdiction will potentially expel many tons of ash and pollutant into the local atmosphere which by themselves may potentially make Sevier Valley a non attainment area. The potential is not noted in the NOI and is a major omission in modeling the airshed of Sevier Valley.”

John Jenks, the engineer at DAQ, testified that the draft scheduled burns were not factored into the air quality modeling because (1) scheduled prescribed burns do not meet the

definition of stationary source as defined in R307-405-6(2); (2) scheduled prescribed burns are otherwise provided for under the Smoke Management Program under its own rule; and (3) the prescribed burns were only at the draft stage, in any event, and would not have been considered.

Sevier Citizens elected not to present evidence on this claim. Having not met its burden of proof that the Executive Secretary erred, Sevier Citizens Claim 7 is hereby denied.

8. Claim 8 is that the Executive Secretary erred in that the “AO for SPC would permit the use of dry bag house filters only for removal of the pollutants produced by the combustion operation. Many authorities site the superior value of water scrubbers for achieving MACT of these pollutants.”

DAQ engineer, John Jenks, testified that wet scrubbing was evaluated but it was determined that dry bag house filters would be more appropriate for this particular plant. Specifically, while wet scrubbing is a technology that is traditionally used primarily for removal of acid gases, dry bag house is more efficient at removing particulate matter as well as controlling mercury and non-metallic hazardous air pollutant (HAP) emissions.

In support of its claim, Sevier Citizens offered no expert testimony, relied on third party information, and did not present evidence sufficient to meet its burden of proof that the Executive Secretary erred in the BACT determination. Claim 8 is therefore, hereby denied.

9. Claim 9 is that the Executive Secretary “did not require sufficient analysis of the impacts of the Sevier Power Company coal-fired power plant on soil, vegetation, wildlife, and animals.”

The evidence indicates that the SPC did submit a soils and vegetation study and that a demonstration, as testified to by George Wilkerson and David Prey, that the secondary NAAQS

will be met does provide protection of wildlife and animals in that the secondary standards for PM10, NO2, and SO2 are set to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

Sevier Citizens presented no expert testimony. Testimony of Scott Chamberlain on selenium levels did not relate to the testimony of DAQ on projected selenium emissions and third party references to need for wildlife studies did not meet the burden of proof demonstrating that the Executive Secretary erred in issuing the Approval Order to SPC. Claim 9 is therefore, hereby, denied.

10. Claim 10 is encompassed by Claim 9 and is dismissed on that basis.

11. Claim 11 is that the Executive Secretary “did not thoroughly analyze the impact of health issues on citizens living in the shadow of the (SPC) power plant.”

In addition to the evidence in the record and testimony presented as to of the validity of the modeling demonstrating that the NAAQS would be met, Dr. Steven Packham, DAQ toxicologist, testified that the purpose of the NAAQS is health-based and designed to protect even sensitive populations.

Sevier Citizens did not present expert testimony, relying on third party articles that did not meet its burden of proof to present sufficient evidence that the Executive Secretary erred in issuing the Approval Order to SPC. Claim 11, is therefore, hereby denied.

12. Claim 12 is that the Executive Secretary failed to consider the financial impact of the property values, job loss, and additional medical expenses that the people of Sevier County will suffer from the AO of the Sevier Power Company permit.”

Sevier Citizens did not state how the Executive Secretary did not comply with the law or

rules. The rules do not provide for review of impact of a source on property values or job loss. The Executive Secretary presented evidence that the review did take into consideration the impacts of growth in demonstrating that the NAAQS would be met. The NAAQS are standards that are designed to protect public health and the environment. Similarly, the Executive Secretary presented evidence of compliance with PSD increment values, which UDAQ included in the modeling, and which exist to protect local air from degrading to the point where violations of these health-based standards would occur.

Sevier Citizens failed to meet its burden of proof of demonstrating the Executive Secretary did not comply with the law, therefore, Claim 12 is hereby denied.

13. Claim 13 is that the Executive Secretary “did not consider the detrimental effects of the Sevier Power Company plant on the surrounding ‘natural attractions of this state’ [Utah Air Conservation Act Chap. 19-2-101(2)].”

George Wilkerson, on behalf of SPC, and David Prey, from DAQ, testified that the modeling demonstrated compliance with Board rules governing Class I areas to include visibility in the National Parks. Further, other than a reference to UCA Section 19-2-101(2) which does not include operative requirements, Sevier Citizens did not identify a specific rule that is alleged to have been violated.

Sevier Citizens relied on third party information and did not meet its burden of proof to demonstrate that the Executive Secretary did not comply with law in issuing the Approval Order, therefore, Claim 12 is hereby denied.

14. Claim 14 is that the Executive Secretary failed to reevaluate the “downwash” modeling in view of the fact that SPC is now going to cover the coal pile with a building.

George Wilkerson testified for SPC that even if the coal pile is uncovered, it would meet the NAAQS and by covering the coal pile, the PM10 concentrations would be decreased. Tom Orth, on behalf of DEQ, testified that even if the coal pile building were 50 feet high, downwash effect would not occur.

Sevier Citizens did not present evidence to rebut these conclusions, and did not meet its burden of proof, therefore, Claim 14 is hereby denied.

Order

Based on the above, Sevier Citizens failed to meet its burden of proof to establish that the Executive Secretary did not comply with State statutes or rules of this Board in issuing the Approval Order to Sevier Power Company to construct and operate a coal-fired steam electric generating facility near Sigurd in Sevier County, Utah. The Sevier Citizens Request for Agency Action is denied. The Approval Order issued by the Executive Secretary to SPC is affirmed.

DATED this _____ day of August, 2006.

Utah Air Quality Board

Notice of the Right to Apply for Reconsideration or Review

Within 20 days after the date this final order is signed in this matter by the Utah Air Quality Board, any party shall have the right to apply for reconsideration with the Board, pursuant to Utah Code Ann. § 63-46b-13. The request for reconsideration should state the specific grounds upon which relief is requested and should be submitted in writing to the Board at 168 North 1950 West, Salt Lake City, Utah, 84114. A copy of the request must be mailed to each party by the person making the request. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this Order.

Notice of the Right to Petition for Judicial Review

Judicial review of this Order may be sought in the Utah Court of Appeals under Utah Code Ann. § 63-46b-16 and the Utah Rules of Appellate Procedure by the filing of a proper petition within thirty days after the date of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of August, 2006, I caused a copy of the forgoing Findings and Conclusions, and Order to be mailed by United States Mail, postage prepaid, to the following:

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